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Haslam v Indigenous Trails Limited (Auckland) [2011] NZERA 926; [2011] NZERA Auckland 531 (14 December 2011)

Last Updated: 23 April 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2011] NZERA Auckland 531
5350092

BETWEEN ALWYN RUSSELL HASLAM Applicant

AND INDIGENOUS TRAILS LIMITED

Respondent

Member of Authority: R A Monaghan

Representatives: A Haslam in person

K Harris-Lassey advocate for respondent

Investigation meeting: (by phone)

4 November 2011

Determination: 14 December 2011

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] (Alwyn) Russell Haslam says his former employer Indigenous Trails Limited (ITL) owes him unpaid wages for work done in late February and early March 2011. The amount in question is \$715 (gross).

[2] By its director, Kat Harris-Lassey, ITL says among other things that the company has ceased to trade, is unable to pay its debts and is being wound up.

[3] Mr Haslam indicated to me that he understands that in such circumstances the likelihood of his receiving the money being claimed is very low, and he now questions why Ms Harris-Lassey in particular cannot be held responsible for the payment in her personal capacity. Further, on the papers available to me I had in any event raised with the parties my concern about whether the liable employer was correctly identified as ITL. This determination is concerned with whether ITL is liable for the payment as the employer party to the employment relationship.

Background

[4] Mr Haslam's employment began in January 2010. There was no written employment agreement, but Mr Haslam said he was employed to drive an airport passenger shuttle service between Auckland and Tauranga and that from time to time he was asked to act as a driver and tour guide for groups of passengers from cruise ships.

[5] From his point of view at the time, he was employed by 'Supa Travel Express'.

[6] Mr Haslam was interviewed for and appointed to his position by Mary Strawbridge. Ms Strawbridge and Desmond Harris provided him with directions as to the work he was to do. From Mr Haslam's perspective they were his managers, and they were also the people with whom he had most contact regarding his work.

[7] Ms Strawbridge and Mr Harris had been the directors of a company named Supa Travel Express Airport Shuttles Limited which was struck off the companies office register in December 2007, and Mr Harris had been the director and shareholder of Supa Travel Express Limited which was struck off the companies office register in December 2008. A third company, Supa Travel Limited (STL), was originally registered in the companies office at the same time as the other two companies, with Ms Strawbridge and shortly afterwards Mr Harris as directors and effective shareholders although subsequently Mr Harris became the sole shareholder.

[8] In April 2009 Mr Harris' sister Kat Harris-Lassey became the sole director, with another company of which she was the director and shareholder, ITL, becoming STL's shareholder. Ms Strawbridge continued to conduct the day-to-day business of Supa Travel while Mr Harris - despite being adjudicated bankrupt in June 2009 - continued an involvement in the business including providing tour guide work to Mr Haslam. Ms Strawbridge herself was later adjudicated bankrupt in March 2011.

[9] Ms Harris-Lassey said that from 2009 Ms Strawbridge remained in the business as her mentor under the terms of the associated sale and purchase agreement.

[10] In those circumstances it is arguable that in 2010 Mr Haslam was employed by STL, which itself was struck off the companies office register in November 2011. He has cited ITL as his employer because the record of earnings which he obtained from the IRD shows ITL paid his wages. It is not necessary to resolve that matter for reasons to which I now turn.

[11] Ms Harris-Lassey said STL was insolvent from the outset and she advanced large sums of money to it. Since this state of affairs did not improve, eventually she decided to cease funding the company. She said the business ceased to operate at the end of 2010, and in or about May 2011 she cancelled the relevant passenger transport licences held by ITL. It was common ground that the drivers' employment was terminated at or about the end of 2010. Mr Haslam said he was aware of this, but also said he was not notified directly that his employment was to be terminated.

[12] The record suggested that Mr Haslam was a part time or more probably a casual employee, and Ms Harris-Lassey said she had been unable to contact Mr Haslam to discuss the closing of the business. Even so she took a wrong approach in replying on an expectation that Mr Haslam would be aware of the matter through discussions with other drivers, regardless of whether her expectation was correct.

[13] Against that background, in early 2011 Mr Harris and Ms Strawbridge offered Mr Haslam the work for which he now seeks payment. Ms Harris-Lassey said no payments from clients for that work were deposited in ITL's bank account, and made additional allegations about actions of Mr Harris and Ms Strawbridge during 2011 which she said were unauthorised and in some respects unlawful.

Determination

[14] Mr Haslam cited ITL as a party to this proceeding, and therefore as the employer liable for the payment of the wages he sought. The Authority cannot proceed to make an order against someone not a party to this proceeding. Although Ms Harris-Lassey gave evidence to the Authority she did so on behalf of ITL. Without further order of the Authority that did not mean she also became a party to the proceeding.

[15] I would not make an order against Ms Harris-Lassey in her personal capacity in any event. I find enough in the evidence to conclude that she was not the employer in her personal capacity, and is not liable to make the payment.

[16] On the information available I find further that, in apparently continuing to operate a business when Ms Harris-Lassey had taken steps to close it, it is likely that either or both of Mr Harris and Ms Strawbridge became Mr Haslam's employer when they offered him what also appears to be casual work in 2011. Accordingly, bankruptcy issues aside, they are also likely to be liable for the payment Mr Haslam seeks. Since they are not parties to this application and have not been heard, I cannot take that matter any further.

[17] For these reasons I am not satisfied to the standard of balance of probabilities that ITL was Mr Haslam's employer when he did the work which is the subject of this claim. Accordingly I make no order against it.

Costs

[18] There will be no order for costs.

R A Monaghan

Member of the Employment Relations Authority
